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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,886	02/27/2004	Andreas Reinmann	34088/US	4573

25763 7590 10/04/2006

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EXAMINER

MCCORKLE, MELISSA A

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/788,886	Applicant(s) REINMANN, ANDREAS	
	Examiner Melissa A. McCorkle	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/29/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the 'holding structure' is not specified in the specification nor is it shown in the drawings.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 27-29, 42-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Svensson et al (5,098,397.) Svensson discloses a port structure[fig 1] comprising an outer wall 8 having a substantially uniform outer circumference interrupted by a plurality of regions having areas of a smaller outer circumference 9, wherein a first region of the plurality of regions comprises a plurality of discrete tactile surface structures, wherein

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each of said discrete tactile surface structures encircles the port structure and are arranged along a length of the port body that comprises at least a portion of the implant area [fig 1], the plurality of discrete tactile structures improving ingrowth characteristics associated with the implant by promoting growth of cellular tissue in at least one direction relative to the surface of the implant 1, a holding structure coupled to a first end of the port structure, the holding structure comprising an encircling ring protruding from the first end of the port structure [see encircling ring in fig 1], the encircling ring comprising a plurality of openings spaced [opening where 10 is (not where it is pointing to, where the number is)] around said encircling ring, and a connecting structure 4 coupled to a second end of the port structure, the connecting structure protruding out of tissue when the implant is inserted into a body and capable of conditionally attaching to a connecting element [fig 1], wherein the implant comprises a non-biosorbable material [col 1line 57]; wherein one of the plurality of regions of tactile surface structure is provided in a region of the implant, wherein, after the implant has been implanted in a body, the surface structure is generally adjacent to the skin; further comprising a holding structure 11 with at least one passage, wherein the plurality of tactile surface structures promote growth of cellular tissue by orienting cell growth in a direction parallel to a skin surface into which the implant is inserted; wherein the plurality of tactile surface structures promote growth of cellular tissue by orienting cell growth in a uniform direction relative to the surface structure of the implant [see col 2 lines 10-20]. He also discloses the method as claimed, because it is inherent to provide a device if the structure is present.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 30-31 and 33-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bestetti et al. Regarding claims 30-31 and 33-41, Bestetti discloses applicant's basic inventive concept of an implant with surface structure, substantially as claimed with the exception of the specified dimensions. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the widths and depths as claimed as a mere design choice lacking any criticality of size as being merely preferable for the intended target area depending on the size of the patient, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions

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would not perform differently than the prior art device. The claimed device is not patentably distinct from Bestetti above. The parameters in claims 30-31 and 33-41 are deemed matters of design choice well within the general skill of the ordinary artisan, obtained through routine experimentation in determining optimal results.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gowda et al (6,459,917) discloses an Apparatus for Access to Interstitial Fluid, Blood, or Blood Plasma Components; Bousquet (5,662,616) discloses a Transcutaneous Access Device; Bentley et al (4,183,357) discloses a Chronic Transcutaneous Implant Assembly for Enterostomies; Poirier (4,668,222) discloses a Percutaneous Access Device with Removable Tube; Owens (4,025,964) discloses Magnetic Electrical Connectors for Biomedical Percutaneous Implants.


Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NICHOLAS D. LUCCIESI
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